

Rosemarie E. Matera (REM-0999)
Kurtzman Matera Gurock & Scuderi, LLP
Attorneys for S&S Fire Suppression Systems, Inc.
2 Perlman Drive
Spring Valley, New York 10977

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
In re:

Case No. 04-22183(ASH)
Chapter 11

S&S Fire Suppression Systems, Inc.,

Debtor.
-----X

Flintlock Construction Services, LLC,

Appellant

against

07 Civ. 2907 (CLB)

S&S Fire Suppression Systems, Inc.,

Appellee
-----X

APPELLEE S & S FIRE SUPPRESSION SYSTEMS, INC.
APPENDIX AND STATE COURT DECISION

Adv. Pro. No. 05-08645(ASH)

<u>Exhibit No.</u>	<u>Docket Entry No.</u>	<u>Document</u>
1	4	Answer to Complaint, Counterclaim against S&S Fire Suppression Systems, Inc., Crossclaim Against Flintlock Construction Services, LLC.
2	5	Answer to Counterclaim filed by Rosemarie E. Matera on behalf of S&S Fire Suppression Systems, Inc.
3	8	Scheduling Order signed on 11/02/2005

4	11	Amended Scheduling Order signed on 2/8/2006
5	12	Motion for Summary Judgment and Contempt on behalf of S&S Fire Suppression Systems, Inc.
6	14	Affidavit in Opposition to Motion for Judgment by Plaintiff
7	13	Order signed on 3/30/2006 Granting Motion for Summary Judgment
8	17	Opposition of S&S Fire Suppression Systems, Inc., to the Motion of Flintlock Construction Services, LLC to (A) Reopen Bankruptcy Case; and (B) Set Aside Default Judgment and Stay Enforcement and Execution. *

* Note - The Appellant included the Opposition to the Motion of Flintlock Construction Services (No. 8 above), but did not include the Exhibits.

Supreme Court, Westchester County
Index No. 11642/03

Exhibit No.

Document

9	Decision After Trial in the matter of Intercounty Supply, Inc. Vs. Tap Plumbing & Heating, et al
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EXHIBIT "1"

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Debtor.

-----X
S&S FIRE SUPPRESSION SYSTEMS, INC.,

Plaintiff,

-against-

TAP PLUMBING & HEATING, INC. and
FLINTLOCK CONSTRUCTION SERVICES, LLC,

Defendants.
-----X

Chapter 11
Case No. 04-22183(ASH)

Adv.Pro.No. 05-08645(ASH)

**VERIFIED ANSWER,
COUNTERCLAIM and
CROSS-CLAIM OF
TAP PLUMBING &
HEATING, INC.**

Tap Plumbing & Heating, Inc. a Defendant in this action, by its attorney, Robert J. McGoeey, alleges as follows.

1. Denies information sufficient to form a belief as to each and every allegation contained in Paragraphs 1, 2, 3, 5, 12, 13, 14, 15, 16, 18, 20, 22, 34, 35, 36, 39, 40, 41, 42, 52, 53 and 54 of the Verified Complaint.

2. Admits the jurisdictional allegation contained in Paragraph 25 of the Verified Complaint and further admits that the proceeding pleaded in the Verified Complaint is a core proceeding as pleaded in Paragraph 26 of the Verified Complaint with a final determination to be rendered by the United States Bankruptcy Court and further admits that venue is proper in this Court as pleaded in Paragraph 27 of the Verified Complaint.

3. Denies each and every allegation as alleged in Paragraphs 10, 23, 29, 31, 32, 44, 45, 46, 48, 49 and 50 of the Verified Complaint.

FILED
US BANKRUPTCY COURT
SDNY
2007 OCT -6 A 10:09

**COUNTERCLAIM AGAINST S&S FIRE
SUPPRESSION SYSTEMS, INC.**

4. The Defendant and Counterclaimant, TAP Plumbing & Heating, Inc., restates and re-alleges the allegations in the Verified Complaint found in Paragraph 25, that this Court has jurisdiction over this Counterclaim, that the Counterclaim constitutes a core proceeding with final determination to be rendered by the United States Bankruptcy Court and that venue is proper in this Court.

5. That the debtor and Plaintiff herein, S&S Fire Suppression Systems, Inc., breached its contract with the Defendant and Cross-Claimant, TAP Plumbing & Heating, Inc., by providing improperly designed, manufactured and installed equipment and systems at the SUNY Purchase College site.

6. That as a result of the aforesaid breach of contract the Defendant and Cross-Claimant, TAP Plumbing & Heating, Inc., was discharged from its obligation of payment under the contract and is entitled to a return from the Plaintiff, S&S Fire Suppression Systems, Inc., of the sum of \$12,150.00 paid under the contract and is entitled to a determination by this Court that TAP Plumbing & Heating, Inc. has no further obligation to the Plaintiff under the said contract.

**AS AND FOR A CROSS-CLAIM IN BEHALF OF
TAP PLUMBING & HEATING, INC. AGAINST THE CO-DEFENDANT,
FLINTLOCK CONSTRUCTION SERVICES, LLC**

7. The Defendant and Counterclaimant, TAP Plumbing & Heating, Inc., restates and re-alleges the allegations in the Verified Complaint found in Paragraph 25, that this Court has jurisdiction over this Counterclaim, that the Counterclaim constitutes a core proceeding with final determination to be rendered by the United States Bankruptcy Court and that venue is proper in this Court.

8. That commencing in October 2002 TAP Plumbing & Heating, Inc. provided work, labor, services and materials in connection with a contract with the Co-Defendant, Flintlock Construction Services, LLC, for the construction of certain dormitories at SUNY Purchase College in Purchase, New York, which labor, services and materials included those to be provided pursuant to the contract with the Plaintiff herein.

9. That from the very commencement of performance of that contract the Co-Defendant, Flintlock Construction Services, LLC, improperly and unreasonably refused payment to TAP Plumbing & Heating, Inc. for work and services duly performed and repeatedly served upon TAP Plumbing & Heating, Inc. notices of default, which were without basis in fact, with the intent to force the removal of TAP Plumbing & Heating, Inc. from the construction project.

10. That in or about the period January, February or March 2003, representatives of Flintlock Construction Services, LLC entered into an agreement with representatives of S&S Fire Suppression Systems, Inc. pursuant to which agreement Flintlock Construction Services, LLC wrongfully agreed to be responsible for all payments due to S&S Fire Suppression Systems, Inc. under its contract with TAP Plumbing & Heating, Inc. in exchange for the promise by S&S Fire Suppression Systems, Inc. to rectify defects in materials and installations already installed, to provide required inspections and to complete the balance of its contract with TAP Plumbing & Heating, Inc.

11. That Flintlock Construction Services, LLC was obligated under its contract with TAP Plumbing & Heating, Inc. to pay to TAP Plumbing & Heating, Inc. all sums due S&S Fire Suppression Systems, Inc., which sums were demanded, but which payments were wrongfully refused by Flintlock Construction Services, LLC.

12. That as a result of the aforesaid, TAP Plumbing & Heating, Inc. was discharged of all further obligations under its contract with S&S Fire Suppression Systems, Inc.

13. That upon information and belief and pursuant to this agreement the Plaintiff, S&S Fire Suppression Systems, Inc., undertook to supply additional materials and labor and completed the inspections requested by Flintlock Construction Services, LLC.

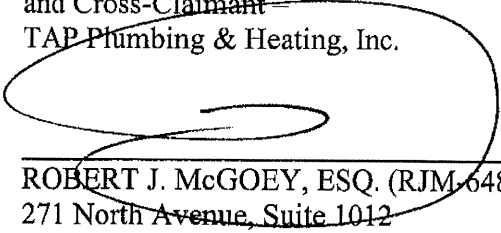
14. That as a result of the aforesaid, the sum of \$70,775.00 allegedly claimed to be due in the Verified Complaint of this matter from TAP Plumbing & Heating, Inc. is in fact due and owing from Flintlock Construction Services, LLC to the Plaintiff, S&S Fire Suppression Systems, Inc. and not from TAP Plumbing & Heating, Inc. pursuant to Flintlock Construction Services, LLC's agreement with S&S Fire Suppression Systems, Inc. and the original contract between Flintlock Construction Services, LLC and TAP Plumbing & Heating, Inc.

WHEREFORE, the Defendant, TAP Plumbing & Heating, Inc., demands judgment

- a) Dismissing the Verified Complaint;
- b) Demands judgment upon its Counterclaim against S&S Fire Suppression Systems, Inc. in the sum of \$12, 150.00; and further
- c) Demands judgment against the Co-Defendant, Flintlock Construction Services, LLC, in the sum of \$70,775.00 and any additional sums, which the Court may determine pursuant to the Cross-Claim in this matter, plus interest, costs and fees; and
- d) such other and further relief as is deemed by this Court to be just and proper.

Dated: New Rochelle, New York
October 5, 2005

ROBERT J. McGOEY, ESQ.
Attorney for Defendant, Counterclaimant
and Cross-Claimant
TAP Plumbing & Heating, Inc.



ROBERT J. McGOEY, ESQ. (RJM-6480)
271 North Avenue, Suite 1012
New Rochelle, New York 10801
(914) 636-3300

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11
Case No. 04-22183(ASH)

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Debtor.
-----X

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Plaintiff,

Adv. Pro. No. 05-08645(ASH)

-against-

VERIFICATION

TAP PLUMBING & HEATING, INC. and
FLINTLOCK CONSTRUCTION SERVICES, LLC,

Defendants.
-----X

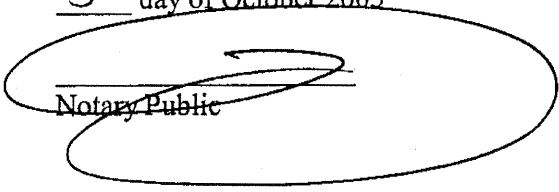
STATE OF NEW YORK)
COUNTY OF WESTCHESTER)ss.:

Richard Sanca, being duly sworn, deposes and states as follows:

That I am the principal of TAP Plumbing & Heating, Inc., the Defendant, Counterclaimant and Cross-Claimant herein; I have read the foregoing Verified Answer, Counterclaim and Cross-Claim and know the contents thereof; and assert that the statements contained therein are true and accurate.


RICHARD SANCA

Sworn to before me this
5th day of October 2005


Notary Public

ROBERT J. McGOEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02MC783330
QUALIFIED IN WESTCHESTER COUNTY
MY COMM. EXPIRES SEPT. 30, 2006

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter 11
Case No. 04-22183(ASH)

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Debtor.

-----X
S&S FIRE SUPPRESSION SYSTEMS, INC.,

Adv.Pro.No. 05-08645(ASH)

Plaintiff,

**AFFIDAVIT OF
SERVICE**

-against-

TAP PLUMBING & HEATING, INC. and
FLINTLOCK CONSTRUCTION SERVICES, LLC,

Defendants.

-----X
STATE OF NEW YORK)

)ss.:

COUNTY OF WESTCHESTER)

Suzanne Rellstab, being duly sworn, deposes and says:

1. I am over the age of 18, not a party to this action, and I reside in Armonk, New York.
2. On October 6, 2005 I served a true copy of Verified Answer, Counterclaim and Cross-Claim of TAP Plumbing & Heating, Inc. by depositing the same via First Class Mail in a sealed envelope with postage prepaid thereon, in a post office or official depository of the U. S. Postal Service within the State of New York upon:

Rosemarie E. Matera, Esq.
Attorney for Plaintiff
Kurtzman Matera Gurock Scuderi & Karben, LLP
2 Perlman Drive
Spring Valley New York 10977

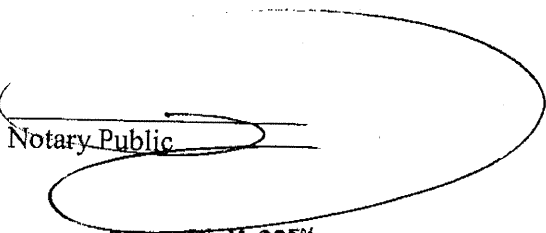
Flintlock Construction Services, LLC
Co-Defendant
77 North Water Street
Greenwich, Connecticut 06830

Flintlock Construction Services, LLC
Co-Defendant
100 Putnam Green
Greenwich, Connecticut 06830

John W.C. Mahoney, Esq.
Attorney for Co-Defendant, Flintlock Construction Services, LLC
4 Fair Meadow Drive
Brewster, New York 10509


SUZANNE RELLSTAB

Sworn to before me this
6th day of October 2005


Notary Public

ROBERT J. MCGOEY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02MC783330
QUALIFIED IN WESTCHESTER COUNTY
MY COMM. EXPIRES SEPT. 30, 2006

EXHIBIT “2”

Rosemarie E. Matera (REM-0999)
Kurtzman Matera Gurock Scuderi & Karben, LLP
2 Perlman Drive
Spring Valley, New York 10977
845-352-8800

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
In re:

Chapter 11
Case No. 04-22183(ASH)

S&S Fire Suppression Systems, Inc.

Debtor.

----- X
S&S Fire Suppression Systems, Inc.

Adv. Pro. No. 05-08645(ASH)

Plaintiff,

v.

TAP Plumbing & Heating, Inc., and
Flintlock Construction Services, L.L.C.

Defendants.
----- X

**VERIFIED ANSWER OF S&S FIRE SUPPRESSION SYSTEMS, INC.
TO THE TAP PLUMBING & HEATING, INC. COUNTERCLAIM**

S&S Fire Suppression Systems, Inc., the plaintiff here ("Plaintiff") by and through its attorneys, Kurtzman Matera Gurock Scuderi & Karben, LLP submits this Verified Answer to the Counterclaim asserted by TAP Plumbing & Heating, Inc. ("TAP") and respectfully sets forth as follows:

1. Plaintiff admits the allegations set forth in Paragraph 4 of the Counterclaim.
2. Plaintiff denies the allegations set forth in Paragraphs 5 and 6 of the Counterclaim.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

3. TAP fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

4. TAP is barred by the doctrine of waiver.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

5. TAP is barred by the doctrine of unclean hands.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

6. TAP is barred by the doctrine of equitable estoppel.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

7. Plaintiff confirmed its Chapter 11 Plan of Reorganization on August 18, 2005.

TAP had notice of the pending bankruptcy. TAP did not file a proof of claim with the United States Bankruptcy Court. TAP's counterclaim is asserted in violation of the discharge injunction of the United States Bankruptcy Code under 11 USC §§ 1141 and 524. Plaintiff is entitled to sanctions against TAP for and on account of its asserted Counterclaim.

WHEREFORE, it is respectfully requested that the Counterclaim be denied in its entirety and attorneys' fees and costs for any and all time expended thereon awarded to Plaintiff.

Dated: Spring Valley, New York
October 26, 2005

KURTZMAN MATERA GUROCK SCUDERI
& KARBEN, LLP
Attorneys for Debtor/Plaintiff

/s/ Rosemarie E. Matera
Rosemarie E. Matera (REM-0999)
Kurtzman Matera Gurock Scuderi & Karben, LLP
2 Perlman Drive
Spring Valley, New York 10977
845-352-8800

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

S&S Fire Suppression Systems, Inc.

Debtor.

S&S Fire Suppression Systems, Inc.

Plaintiff,

v.

TAP Plumbing & Heating, Inc., and
Flintlock Construction Services, L.L.C.,

Defendants.

Chapter 11

Case No. 04-22183(ASH)

Adv. Pro. No. 05-

VERIFICATION

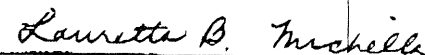
State of New York)
County of Rockland)ss.:

Domenick Serrano, being duly sworn, deposes and states as follows:

I am the principal of the Debtor herein; I have read the foregoing Answer and know the contents thereof; and assert that the statements contained therein are true and accurate.


Domenick Serrano

Sworn to before me this
day of October, 2005


(Notary Public)

LAURETTA B. MICHELLA
Notary Public, State of New York
No. 01MI5057666
Residing in Rockland County
Commission Expires March 25, 2006

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Debtor.
-----X

S&S FIRE SUPPRESSION SYSTEMS, INC.,

Plaintiff,

V.

TAP Plumbing & Heating, Inc., and
Flintlock Construction Services, LLC

Defendant
-----X

State of New York)

County of Rockland)ss

Sherry Kramer, being duly sworn, deposes and says:

1. I am over the age of 18, not a party to this action and I reside in Pomona,
New York.
2. On October 26, 2005 I served a true copy of the **Verified Answer of S&S Fire Suppression Systems, Inc. To the TAP Plumbing and Heating Counterclaim** by depositing the same via First Class Mail in a sealed envelope with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York upon:

Robert J. McGoey, Esq.
Attorney for TAP Plumbing & Heating Inc.
271 North Avenue
Suite 1012
New Rochelle, NY 10801
And by Facsimile to (914) 636-7269

/s/ Sherry Kramer
Sherry Kramer

Sworn to before me this
26th day of October, 2005

/s/ Karen Schaefer

Karen Schaefer
Notary Public, State of New York
No. 01SC6104397
Commission Expires January 20, 2008